

Civil Revision Application No 2234 of 95

Date of decision: 01/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

DILIP HARILAL

VS

DEVRAJ KACHARA

Appearance:

MR SURESH M SHAH for Petitioner

MR. J.D. AJMERA for Respondent No. 1

Coram : MR.JUSTICE S.D.SHAH

Date : 1st February,1996

ORAL JUDGEMENT

1. Rule. Mr. J.D. Ajmera waives service of Rule. With the consent of the learned Advocates appearing for the parties, the matter is finally decided today.

2. It appears that in the Civil Suit filed by the respondent judgment creditor, a money decree is passed in his favour. He applied for execution thereof by filing Special Execution Application No. 29 of 1982 in the Court of Civil Judge, S.D. at

Khambhalia. In such proceeding, an application was given by the judgment debtor at Exhibit 113 to the effect that in view of the amendment in Section-6 of the Bombay Civil Court (Gujarat Amendment Act), 1993, the proceedings of Darkhast were required to be transferred to Court of Civil Judge, J.D. Khambhalia. The provisions of the said Section are reproduced hereunder:

"6. Transfer of pending cases - All suits and proceedings of a civil nature where in the subject matter exceeds in amount or value twenty thousand rupees but does not exceed fifty thousand rupees pending in a Court of Civil Judge (Senior Division) immediately before the commencement of the Bombay Civil Courts (Gujarat Amendment) Act, 1993 (Guj. 19 of 1993) shall after such commencement, stand transferred to and be disposed of by, a Civil Judge (Junior Division) within the local limits of his ordinary jurisdiction."

3. In view of the clear language employed in the said provision, this Court has no hesitation in holding that even proceedings of civil nature wherein the subject matter exceeds an amount or value of rupees twenty thousand but it does not exceed fifty thousand rupees pending in a Court of Civil Judge (Senior Division), they shall stand transferred to and be disposed of by a Civil Judge, Junior Division. In view of the aforesaid clear statutory provision, the application made by the judgment debtor was required to be granted. However, by a strange reasoning, the trial court has rejected such application. The order of the trial court is therefore quashed and set aside and the Special Execution Application No. 29 of 1982 is directed to be transferred to the Court of Civil Judge, J.D., Khambhalia and Civil Judge, J.D., Khambhalia is directed to decide such proceeding on or before 30th June, 1996. Rule is made absolute accordingly. No costs. Office is directed to send down the writ of this order to the trial court forthwith.

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